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In re Application of :
LUO, Jingxun :
U.S. Application No.: 10/556,850 :
PCT No.: PCT/CN03/01034 : DECISION ON PETITION
Int. Filing Date: 03 December 2003 :
Priority Date: 05 December 2002 :
Attorney Docket No.: 74257-011 :
For: A TRIANGULAR OVERHEAD TERRACE :
ASSEMBLY

This decision is in response to applicant's facsimile communication dated 16 November 2005, which is being treated as a Petition under 37 CFR 1.181 and 37 CFR 1.137(b).

BACKGROUND

On 03 December 2003, applicant filed international application PCT/CN03/01034 which claimed a priority date of 05 December 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 01 July 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 05 June 2005.

On 16 November 2005, applicant filed the present petition.

A. Petition under 37 CFR 1.181

Applicant states in their present petition that the basic national fee, the transmittal letter to enter the United States national stage, a translation of the international application, and a petition to revive under 37 CFR 1.137(b) were received by the USPTO on 07 July 2005. A review of the application file reveals that the papers are not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by the title of invention; applicant's name; and docket number. The evidence submitted by applicants, consisting of a postcard receipt with a PCT/PTO mailroom date stamp of 07 July 2005 which itemizes all the papers filed on said date. The postcard receipt bearing the applicant's name, title of invention, and attorney docket number is sufficient to indicate that the above papers were received on 07 July 2005.

B. Petition under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the payment of the basic national fee of \$150.00.

As to Item (2), the appropriate petition fee of \$750.00 as required by 37 CFR 1.17 will be charged to Deposit Account no. 50-1946.

With regard to Item (3), applicant's statement that "the steps need to be taken to enter the National Phase were overlooked and the application was therefore unintentionally abandoned" does not comply with 37 CFR 1.137(b)(3). However, the statement will be accepted and construed as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, Petitioner is required to provide a statement to that effect.

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application has a receipt date of 07 July 2005.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration along with the \$65 surcharge for filing the oath or declaration after the thirty-month period is required.

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